

STATE OF NEW JERSEY  
DEPARTMENT OF LAW AND PUBLIC SAFETY  
DIVISION ON CIVIL RIGHTS  
OAL DOCKET NO. CRT 02331-09S  
DCR DOCKET NO. HN35ST-06005

---

LINDA CALLAHAN and  
C. CARLOS BELLIDO, ACTING DIRECTOR,  
NEW JERSEY DIVISION ON CIVIL RIGHTS,  
Complainants,

v.

IRVING J. PROUD,  
Respondent.

ADMINISTRATIVE ACTION  
FINDINGS, DETERMINATION  
AND ORDER

---

**APPEARANCES:**

**Beverley A. Lapsley**, Deputy Attorney General, for the complainants (Anne Milgram, Attorney General of New Jersey, attorney).

No appearance by or on behalf of the respondent.

**BY THE DIRECTOR:**

**I. INTRODUCTION**

This matter is before the Director of the New Jersey Division on Civil Rights (Division) pursuant to a verified complaint filed by the original complainant, Linda Callahan (Complainant), alleging that the respondent, Irving J. Proud (Respondent), subjected her to unlawful discrimination in violation of the New Jersey Law Against Discrimination (LAD), N.J.S.A. 10:5-1 to -49. On July 1, 2009, the Honorable Jeff S. Masin, Administrative Law Judge (ALJ), issued an initial decision finding that Respondent discriminated against Complainant Callahan, and awarded her the sum of \$11,586.00. The ALJ also assessed Respondent a penalty in the amount of \$5,000.00. Having independently reviewed the record, the Director adopts the ALJ's decision, as modified herein.

## **II. PROCEDURAL HISTORY**

On or about June 2, 2006, Complainant Callahan filed a Verified Complainant against Respondent, alleging unlawful housing discrimination based on sex (female), in violation of the LAD. ID-1<sup>1</sup>. On or about June 22, 2006, she filed a similar complaint with the United States Department of Housing and Urban Development (HUD), asserting the same complaint of discrimination under the Fair Housing Act, 42 U.S.C. 3600-3620. This dual-filed complaint was processed by the Division pursuant to 42 U.S.C. 810(f). Respondent was served with a copy of both complaints and the Division's document and information request (D&I), along with written notice that Respondent was required to file answers to both the Division complaint and the D&I within 20 days. Respondent failed to respond to either of these documents, and the Division initiated default proceedings pursuant to N.J.A.C. 13:4-5.1 – 5.4. ID-1.

On December 10, 2008, then Director J. Frank Vespa-Papaleo entered an Order for Entry of Default against Respondent. ID-2. On February 6, 2009, the Division transmitted the complaint to the Office of Administrative Law (OAL) for a proof hearing. The original complaint was amended to add the Director of the Division as an additional complainant. A hearing was held on June 12, 2009, to permit proofs as to the complaint and the alleged remedies appropriate if discriminatory conduct was found to have occurred. Although Respondent had defaulted, notice of the scheduled proof hearing was provided to him. Respondent telephoned the ALJ's legal assistant several days before the hearing date, at which time it was confirmed that a hearing was scheduled. Nevertheless, Respondent did not appear at the hearing. The record closed following receipt of Complainant Callahan's testimony and the comments of her attorney. Ibid.

---

<sup>1</sup> Hereinafter, "ID" refers to the initial decision issued on July 1, 2009, and "Director" refers to the Acting Director, C. Carlos Bellido.

### The Entry of Default

As part of the Division's police power to prevent and eliminate unlawful discrimination, the Division is mandated to investigate complaints filed with the Division, to determine whether there is probable cause to believe that the respondent engaged in unlawful discrimination. N.J.S.A. 10:5-2, 10:5-6, 10:5-14. The Legislature has determined this mandate to be sufficiently important that willfully impeding or interfering with the Division's investigations is a disorderly persons offense. N.J.S.A. 10:5-26. To ensure that recalcitrant respondents do not obstruct the Division's efforts to investigate charges of unlawful discrimination, the Division has promulgated regulations that permit the entry of default against respondents who fail and refuse to answer the Division's complaints and requests for information, after providing specific and clear notice of the consequences of failure to cooperate. N.J.A.C. 13:4-5.1 - 5.4.

N.J.A.C. 13:4-5.1 provides that the Director may enter default against a respondent for failure to answer the Division's verified complaint and/or D&I. Default may be entered only after a respondent has been advised of the consequences of its failure to answer and has been served with a notice and order granting ten additional days to file answers to the complaint and/or request for information. N.J.A.C. 13:4-5.2 (a). Notice to the respondent must specify that if the respondent fails to answer the interrogatories within the specified time period, the Director may enter a default in the case, which shall constitute an admission that the answers and information, if provided, would establish facts in accordance with the claim of the complainant. Ibid. The Division's notice must also inform the respondent that entry of default will constitute a waiver of the respondent's rights to have the Division investigate the allegations of the complaint, determine whether there is probable cause to credit the allegations of the complaint, make conciliation efforts, or hold a public hearing. The notice must also advise the respondent that the entry of default will constitute a waiver of the respondent's right to present any defenses to the complaint. N.J.A.C. 13:4-5.2(b).

If the respondent fails to file answers to the complaint or interrogatories by the end of the ten day period specified in the Director's notice and order, the Director shall order the entry of default against the respondent. N.J.A.C. 13:4-5.2(b). Nevertheless, within 10 days after the entry of default, the Director must serve notice of the entry of default on the respondent which informs the respondent of the opportunity to petition the Director to vacate the entry of default before the case is transmitted to the OAL for a hearing. N.J.A.C. 13:4-5.2 (d). Under the Division's rules, the respondent may petition the Director to vacate the default and reopen the case for good cause shown supported by affidavit, which shall include complete answers to the complaint and information request. N.J.A.C. 13:4-5.3. Should the respondent fail to so petition the Director, the case shall be transmitted to the OAL within 20 days of the notice of the entry of default. At the ensuing default hearing, the proofs shall consist of the order of entry of default, supporting affidavits, and any other evidence proffered by the complainant, and the only cognizable issues shall be whether the facts established constitute an act of discrimination. N.J.A.C. 13:4-5.4 (a).

Here, on October 18, 2006, the Division issued a subpoena duces tecum requiring Respondent to appear at the Division offices on November 2, 2006, and produce specified documents. The Division attempted to personally serve the subpoena on Respondent but was unable to do so. Several copies were sent to Respondent via certified and regular mail, with the certified copies being returned as unaccepted. However, the regular mailings, sent on June 8, June 23 and August 28, 2006, were not returned. After attempting to personally serve a copy on Respondent, the Division left a copy of the subpoena in the mailbox at his residence on April 7, 2007. On April 8, 2007, the Division served copies of the verified complaint, the subpoena and the document and information request on Respondent by overnight mail, certified and regular mail, requesting that he contact the Division immediately upon receipt. No response was received. On or about May 30, 2008, the Director issued a Notice and Order advising

Respondent that he had ten (10) days from receipt in which to reply to the complaint, D&I, and interrogatories. That Order provided in relevant part that a default shall constitute:

(a) An admission that the interrogatories, if answered, would have established facts in accordance with the claim of the complaint;

(b) A waiver of your right to have this Division conduct further investigation, find whether there is probable cause, make conciliation efforts or hold a public hearing (N.J.S.A. 10:5-14, 10:5-14, 10:5-15; N.J.A.C. 13:4-2.1, 13:4-6.1, 13:4-11, 13:4-12.1).

(c) A waiver of your right to present any and all defenses.

On July 9, 2008, a Division investigator personally served copies of the above documents on Respondent, in the presence of three members of the Carneys Point, New Jersey police force. As of November 25, 2008, no response from Respondent was received. On December 10, 2008, the Director issued an Order for Entry of Default on Respondent pursuant to N.J.A.C. 13:4-5.2. Despite numerous communications by the Division to Respondent, and an entry of default against him, Respondent failed to respond. The matter was subsequently transferred to OAL.

On June 8, 2009, the OAL issued a Notice of Plenary Hearing to be held on June 12, 2009, and served a copy on Respondent. Prior to this hearing the ALJ's office received a telephone call from Respondent inquiring whether the hearing was still on. While he was advised that it was, he did not attend nor did anyone acting on his behalf.

### **III. THE ALJ'S DECISION**

#### **THE ALJ's FINDINGS OF FACT**

The ALJ heard testimony from Complainant Callahan. Callahan testified that she had given her daughter funds to seek a rental apartment. Although Respondent had at first said that he had no apartments available, in early March 2006 he advised them that he had an apartment at 54 Broadway in Ocean Grove. Complainant Callahan went with her daughter to see it and they put down a \$575 deposit for an April 1, 2006 occupancy. Complainant Callahan's daughter then changed her mind and asked if her mother could

take the apartment. Respondent indicated that this would not be a problem. Complainant Callahan was scheduled to move into the apartment on May 1, but because she was set to have surgery on April 25 and apartments were scarce, she decided to move in April. The lease for her old apartment was to expire in May. She gradually moved into the Broadway apartment. The rent for the new apartment was \$575 a month, whereas the rent for her old apartment was \$890 a month. Complainant Callahan paid Respondent a pro-rated rent for April 1 through April 15, as the monthly rent was due on the 15<sup>th</sup> of each month. She began moving in on April 10. ID-2.

Complainant Callahan testified that on the 13<sup>th</sup> of April, Respondent asked to speak with her and motioned her to sit down in his living room. ID-2. Respondent told her that he was wondering why he had problems with his female tenants and had concluded that he should only rent to single men. He told her that he was a celibate Christian man and that, as her presence caused him to have "thoughts," she would have to move out. Ibid. He added that he could not make her move out, but that he was going to tell Amanda, another woman about to move in, the same thing. ID-2,3.

Complainant Callahan testified that she did not respond to this "blatant disregard of the law." ID-3. She was "speechless," having "done nothing." She decided that she would stay in the apartment and give him the rent money, telling him that she was not leaving. She also gave him "appropriate boundaries" and spoke of "mutual respect." She believed that she had given him absolutely no reason to believe that she was interested in him. However, on April 20th, a note was slipped under her door which purported to terminate her lease as of May 15th. Complainant Callahan testified that she was "freaked out" by this and could not believe it was happening, particularly as her surgery was scheduled for April 25th and she had no time to look for other accommodations. Ibid.

Callahan had stayed in her old apartment and she contacted its management to see if she could continue renting that apartment. ID-3. She was advised to put her

request in writing but that there would be no problem. She arranged for a mover to move her belongings back to the old apartment. Complainant Callahan testified that she had already changed her license and registration to reflect the new address, at a cost of \$27. The cost of the movers was \$808 but, after arguing over the amount, Respondent reimbursed her for this expense. Respondent also gave her a check for \$700, which he characterized as "sec and settlement" on his check, an amount she identified as "his number." Ibid.

Complainant Callahan testified that she had given Respondent a security deposit of \$575; prorated rent of \$287.50 and rent for the month from April 15 to May 15 of \$575, totaling \$1,437.50. ID-3. She moved out on April 24. The monthly rent for the new lease on her old apartment was \$890, the same it had been under the old lease. As a result, for the period of one year from her new lease she paid \$315 a month above the rent she would have paid to Respondent, totaling \$3,780. She had no lease with Respondent, so that her tenancy was month-to-month. Ibid.

Complainant Callahan testified that this incident caused her "deep, deep humiliation," and that she had "never been treated like this." ID-3. She had not created any problem as Respondent's tenant, and could not believe his arrogance and absolute disregard of the law. She had had about two days of peace at the Ocean Grove address, but his conduct scared her. She stated that when Respondent told her that he was having thoughts about her she felt that he was "very very creepy." Ibid.

The ALJ found Complainant Callahan to be "sincere, honest, appropriately disturbed by her experience and entirely credible." ID-4. The ALJ also noted that Respondent had not appeared in this case to present his version of the facts. Based on Complainant's testimony, the ALJ found that Respondent had held out his apartment for rent, allowed her to move in, accepted her rent money, and then, within days, told her that because she was a female her presence apparently disturbed him enough that he wanted her to leave and terminate her rental. When she reasonably declined this

demand, he then placed it in writing and terminated her rental for no other expressed reason than that she was a female. Ibid.

### THE ALJ'S LEGAL CONCLUSIONS

The ALJ cited to N.J.S.A. 10:5-4, which provides that:

All persons shall have the opportunity to obtain employment, and to obtain all the accommodations, advantages, facilities, and privileges of any place of public accommodation, publicly assisted housing accommodation, and other real property without discrimination, because of race, creed, color, national origin, ancestry, age, marital status, affectional or sexual orientation, familial status, disability, nationality, sex, gender identity or expression or source of lawful income used for rental or mortgage payments, subject only to conditions and limitations applicable alike to all persons. This opportunity is recognized as and declared to be a civil right.

The ALJ found that in an administrative action brought under this statute, the burden to establish the conduct alleged to be discriminatory rests upon the complainant, who must prove that discrimination occurred by a preponderance of the credible evidence. ID-4, citing In re Polk, 90 N.J. 550 (1982). The ALJ found this to be a "pure" example of discrimination in the rental of a public accommodation solely based on the sex of the renter, and concluded that Respondent violated the LAD. ID-4.

The ALJ next addressed the remedies to which Complainant is entitled, and concluded that awards for both economic damages and non-economic losses such as mental anguish, pain and humiliation may be appropriate. ID-4, 5, citing Anderson v. Exxon Co., 89 N.J. 502 (1982); Goodman v. London Metals Exchange, Inc., 86 N.J. 35 (1981); Zahorian v. Russell Fitt Real Estate Agency, 62 N.J. (1973). The ALJ found that Respondent owed Complainant a total of \$979 for the return of the security deposit plus the prorated rent she paid for the period April 15, 2006 through April 24, 2006. Because Respondent reimbursed Complainant Callahan in the amount of \$700, her economic loss for these items was \$279. In addition, the ALJ found Respondent liable for the \$27



Complainant Callahan incurred in changing her license and registration. Finally, the ALJ found that Respondent was liable for the difference between the rental payments for the two apartments for a period of one year, totaling \$3,780. When this total is added to the amount owed to her for the security deposit, prorated rent, and license and registration, Complainant's costs totaled \$4,086. ID-5.

The ALJ also found that payment to Complainant Callahan for the indignity, humiliation and anguish she suffered was appropriate, as it can be presumed to have been proximately caused by discrimination. ID-6, citing Gray v. Serruto Builders, Inc., 110 N.J. Super. 297, 312-313 (Chan. Div. 1970). Such an award may be made even without any evidence of severe manifestations of injury or medical treatment sought. Majofsky v. Mercer County Prosecutor's Office, 92 N.J.A.R. 2d 77, 108-109 (Div. on Civil Rights), aff'd 95 N.J.A.R. 2d 107 (Div. on Civil Rights). The ALJ found that Complainant Callahan was not simply denied the right to rent Respondent's apartment ab initio. Instead, she was first provided with the apartment and, only after she went to the trouble of moving in, the apartment was pulled away from her by the discriminatory conduct of Respondent. As such, her anguish and humiliation was no doubt greater than it might have been if she had been denied the right to rent the apartment in the first place. In light of prior decisions by the Division in matters of discrimination, the ALJ awarded the amount of \$7,500 for humiliation and anguish. Id., citing Floyd v. Hatrak, CRT 10834-98, Initial Decision (January 17, 2001) rejected, Director, Div. on Civil Rights (September 4, 2001) (\$5,000 for refusal to show apartment due to race); Scaravelloni v. Butterfield Enterprises, 8 N.J.A.R. 89 (Div. on Civil Rights 1984), adopted, Director, Div. on Civil Rights (April 3, 1984) (\$5,000 for refusing admission to disco because of crutches). Accordingly, the ALJ awarded Complainant Callahan total compensatory damages of \$11,586. The ALJ also assessed Respondent a penalty of \$5,000. ID-6.

#### **IV. THE DIRECTOR'S DECISION**

##### **THE DIRECTOR'S FACTUAL FINDINGS**

Initially, the Director finds that the record establishes that the Division properly served Respondent with all notices and otherwise complied with all procedures required by N.J.A.C. 13:4-5.2. Thus, the Director is satisfied that the entry of default in this matter was proper. The Director also notes that Respondent has filed no exceptions to the ALJ's initial decision, and has in no other manner objected to the ALJ's rulings.

The default order suppressed any defenses which Respondent might have raised in this matter, and constituted Respondent's admission that answers to the verified complaint and the D&I request, if provided, would have established facts in accordance with Complainants' claims. N.J.A.C. 13:4-5.2(b). Thus, the Director deems the allegations of Complainant's verified complaint to be true. Moreover, the ALJ heard testimony from Complainant Callahan as to the discriminatory nature of Respondent's conduct and the effects it had on her, and found this testimony to be credible. It is well settled that an agency head must give due deference to the ALJ's factual determinations because the ALJ had the opportunity to hear the live testimony of witnesses, observe their demeanor, and judge their credibility. Clowes v. Terminix, 109 N.J. 575, 587-88 (1988).

Under the Uniform Administrative Procedure Rules, the Director may reject or modify the ALJ's findings of fact, but must clearly state the reason for doing so. N.J.A.C. 1:1-18.6(b). Moreover, an agency head may not reject or modify any finding of fact based on the credibility of a lay witness unless it first determines from a review of the record that the finding is arbitrary, capricious or unreasonable, or is not supported by sufficient, competent, and credible evidence in the record. N.J.A.C. 1:1-18.6(c). Neither Complainant nor Respondent has filed exceptions, and an independent review of the

record finds no contradictions to the ALJ's factual findings. Accordingly, the Director concludes that the ALJ's factual findings as recited herein are supported by sufficient evidence in the record, and he adopts them as his own.

#### THE DIRECTOR'S LEGAL ANALYSIS AND CONCLUSIONS

The LAD generally makes it unlawful for any person, including the owner, "(t)o refuse to sell, rent, lease, assign, or sublease or otherwise to deny or withhold from any person... any real property or part or portion thereof because of... sex." N.J.S.A. 10:5-12(g) (1). The undisputed direct evidence establishes that Respondent demanded that Complainant leave the apartment he had rented to her solely because of her sex. Accordingly, the Director adopts the ALJ's conclusion that Respondent has violated the LAD.

The LAD provides that, upon a finding that a respondent has engaged in unlawful discrimination, the Director may provide appropriate affirmative relief as, in the Director's judgment, will effectuate the purpose of the act. N.J.S.A. 10:5-17. The Director concurs with the ALJ's recommendation and awards Complainant \$575 for the security deposit paid to Respondent; \$27 for costs associated with the change in her license and registration; and \$404 representing the prorated amount she paid for the apartment rental after she vacated Respondent's apartment on April 24, 2006.

The Director also concurs with the ALJ's conclusion that Respondent is liable for the difference between the rent paid by Complainant Callahan for her old apartment to which she had been forced to relocate, and that which she would have paid to Respondent had she been permitted to remain as a tenant for a period of one year<sup>2</sup>. This totals \$3,780. The award for Complainant's security deposit, license & registration, prorated rent, and rent differential must be reduced by \$700, the amount Respondent

---

<sup>2</sup> Although Complainant Callahan may have suffered monetary damages for the rent difference for a period of more than one year, it was her burden to prove the actual extent of her damages and she did not file any

returned to Complainant when she departed. Thus, Complainant's total damage award for economic loss is \$4,086.

A victim of discrimination is generally entitled to pre-judgment interest to make the victim whole when the respondent has retained use of monies which rightfully belonged to the victim of discrimination. See Potente v. County of Hudson, 378 N.J. Super. 40, 49 (App. Div. 2005). Applying the interest rates set forth in the New Jersey Court Rule 4:42-11(a)(ii), the Director awards pre-judgment interest for Complainant's economic losses as follows:

2006 -	\$ 54.48
2007 -	\$165.62
2008 -	\$236.84
2009 -	<u>\$112.51</u>

Total interest \$569.45

A victim of unlawful discrimination under the LAD is also entitled to recover non-economic losses such as mental pain and anguish or emotional distress proximately related to unlawful discrimination. Andersen v. Exxon Co., 89 N.J. 483, 502-503 (1982). Such a victim is entitled, at a minimum, to a threshold pain and humiliation award for enduring the "indignity" which may be presumed to be the "natural and proximate" result of discrimination. Gray v. Serruto Builders, Inc. 110 N.J. Super. 297, 312-313, 317 (Ch. Div. 1970), Tarr v. Ciasulli, 181 N.J. 70, 82 (2004). Thus, pain and humiliation awards are not limited to instances where the complainant sought medical treatment or exhibited severe manifestations. Id. at 318. In the ALJ's decision, he found that this was a "blatant, indeed in a sense, a 'pure' example of discrimination in the rental of a public accommodation resulting solely because of the sex of the renter." After a careful review of the record, the Director concludes that the ALJ's recommendation was appropriate, and awards Complainant \$7,500 for mental pain and suffering.

---

exceptions to the ID.

In addition to any other remedies, the LAD provides that the Director shall impose a penalty payable to the State Treasurer against any respondent who violates these statutes. N.J.S.A. 10:5-14.1a. The maximum penalty under the LAD for a first time offense is \$10,000. Ibid. After considering all the circumstances surrounding this case, the Director agrees with the ALJ's decision and assesses a penalty of \$5,000 against Respondent.


Finally, a prevailing party in a LAD action may be awarded reasonable attorney's fees. N.J.S.A. 10:5-27.1. The Director concludes it is appropriate to make an award of attorney's fees in this case, and will provide Complainant's counsel 20 days from the date of this order to present a certification of services and related certifications as to the reasonable hourly rate for counsel's work.

#### **V. ORDER**

Based on all of the above, the Director concludes that Respondent engaged in unlawful discrimination in violation of the LAD. Therefore, the Director orders as follows:

1. Respondent and his agents, employees and assigns shall cease and desist from doing any act prohibited by the New Jersey law Against Discrimination, N.J.S.A. 10:5-1 to -49.
2. Within 45 days from the date of this order, Respondent shall forward to the Division certified funds payable to Linda Callahan in the amount of \$12,155.45 as compensation for her monetary losses with interest, and her pain and humiliation.
3. Within 45 days from the date of this order, Respondent shall forward to the Division a certified check payable to "Treasurer, State of New Jersey" in the amount of \$5,000 as a statutory penalty.

4. The penalty and all payments to be made by Respondent under this order shall be forwarded to the attention of Waleska Lucas, New Jersey Division on Civil Rights, P.O. Box 46001, Newark, New Jersey 07102.
5. Any late payments will be subject to post-judgment interest calculated as prescribed by the Rules Governing the Courts of New Jersey, from the due date until such time payment is received by the Division.



C. CARLOS BELLIDO, ESQ.  
ACTING DIRECTOR  
NEW JERSEY DIVISION ON CIVIL RIGHTS

DATE: August 12, 2009